

### Remarks/Arguments

Applicant would like to thank the Examiner for once more indicating that claim 26 included patentable subject matter which would be allowable if rewritten in independent form. Applicant has added new claim 39 which incorporates the limitations of former claim 26 and the claims from which former claim 26 depended. Claims 1, 4-9, 11, and 13-32 of the pending application stand rejected. Claim 1 has been amended to address the Examiner's rejection under 35 U.S.C. §112, second paragraph. Specifically, the Applicant has clarified that the "retainer wall" referenced in line 6 of the claim is the same as the "spill retainer wall" identified in line 4 of the claim. The Applicant has corrected all instances of reference to the "retainer wall" by clarifying that this element is the "spill retainer wall." Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. §112, second paragraph.

#### A. Rejection of Independent Claims 1 and 32 under 35 U.S.C. §103 in view of Williams (US Patent No. 4,852,759) and Morrison (US Pub. Application 2003/0230244).

The Examiner has rejected independent claims 1 and 32 as being unpatentable under 35 U.S.C. §103 in view of Williams (US Patent No. 4,852,759) and Morrison (US Pub. Application 2003/0230244). The Examiner contends that Williams discloses a painter's portable tool kit comprising the single component of a topple resistant receptacle. The Examiner further contends that Williams' receptacle comprises a flat bottom surface, an inner

surface, comprising a paint can securing means surrounded by a spill retainer wall, the receptacle comprising a shallow pan shaped container having a flat bottom surface with a retainer wall extending upwardly about a perimeter thereof to form a liquid holding well. In the Examiner's view, Williams discloses the Applicant's invention except for the double-walled retainer wall. The Examiner then notes that Morrison discloses a double walled retainer wall. Moreover, the Examiner contends that Morrison also discloses that the top wall (or means for connecting the top margins) includes a recess for attaching an extending guide member.

The Applicant respectfully submits that Morrison does not teach the use of a guide member according to the present invention, especially in view of the amendments Applicant has made to clarify the structure and function of the Applicant's guide member. Element 120 in the Morrison application, which the Examiner identifies as the guide member, is actually an inwardly directed lip to reduce spillage of food and water from the inside of the container. The lip element 120 in the Morrison application does not perform any guiding or locating function, rather it merely serves to retain the contents of the container when the container is moved. In contrast, Applicant's guide members serve two purposes, namely, defining a space wherein a painter's tool can rest, and enabling the stacking of multiple receptacles. The lip element 120 in the Morrison application is not a guide member.

Even if the lip element 120 in Morrison could be considered to be a guide member, which it cannot, it is not a spaced apart guide member as required by

Applicant's present amendments. Note that at paragraph 15, the Morrison application specifies that the lip 120 extends around the entire perimeter of the bowl. In contrast, the Applicant's guide members are spaced apart, so as to define a space in which a painter's tool can rest. The continuous lip around the perimeter of the bowl in Morrison is not a guide member according to the present invention. Consequently, the rejection of the claims based on the combination of Williams and Morrison is improper, because this combination does not teach every limitation of the Applicant's claimed invention.

Throughout this latest Office Action, various other §103 rejections have been made to Applicant's dependent claims. For the sake of brevity, Applicant asserts that each of the dependent claims should be allowable as being based on allowable independent claims. As discussed above, independent claims 1 and 32 have been amended to further define the claimed invention. However, the Applicant wishes to draw the Examiner's attention to two references which were mischaracterized in their application to the rejections of some of the dependent claims.

B. The Examiner has mis-apprehended the teachings of Pool (US 4,240,568) and Desjardins (US 4,890,807) in the rejections of dependent claims 17, 22 and 23.

The Examiner cites the Pool '568 patent as disclosing "a wiping shield 167 with a raised shoulder." Closer inspection of the Pool '568 reference shows that element 167 is a straining element, which is used for removing solid masses and

other contaminates from the liquid within the container during pouring. (See Pool '568 column 8, lines 52-58.) The straining element 167 is described as being foraminous (perforated) and in Figure 15 of the Pool '568 patent, it can be seen that element 167 is made of mesh.

In contrast, the Applicant's wiping shield is a solid member, as shown in Applicant's Figure 8, which surrounds the area around the wiping bar to direct paint accumulating in the wiping bar area back into the can. If the straining element 167 were to be used as a wiping shield in the Applicant's invention it would be unsuitable for that purpose because of the perforations in the straining element. If element 167 were to be made solid to as to perform the function of a wiping shield, it would not function as a straining element. It has been routinely held that when prior art is modified in such a way as to make it unsuitable for its original purpose, it cannot form the basis for an obviousness rejection. See *e.g. Ex parte Takamatsu*, 2008 WL 1318624 (Bd.Pat.App. & Interf., April 8, 2008).

Applicant respectfully submits that the straining element 167 of the Pool reference does not teach the use of a wiping shield, and therefore, rejection of dependent claims 22 and 23 based on Pool is improper.

The Examiner rejected claim 17 on the ground that the Desjardins '807 patent teaches "a tool support device 34 with a straight inside edge with a further wiping edge extending angularly therefrom at portion 50." Closer inspection of the Desjardins reference shows that portion 50 is a serration for removing residue from a tool. (See Desjardins '807, column 2, lines 11-13.) In contrast, Applicant's second wiping edge extending angularly from the generally straight

first wiping edge is illustrated in Figure 10 of the present application. The two wiping edges form a 90° angle and provide for the simultaneous wiping of the front and side of a paint brush. The serrations shown in the Desjardins '807 patent do not teach or suggest such a configuration. Applicant respectfully submits that the serration element 50 of the Desjardins reference does not teach the use of a second wiping edge extending angularly from the generally straight first wiping edge, and therefore, rejection of dependent claim 17 based on Desjardins is improper.

### C. Conclusion

In view of these amendments and remarks, Applicant respectfully requests that all prior rejections be reversed, and all remaining claims pass to allowance and eventual issuance. Should the Examiner should have any additional questions or concerns regarding this matter, he is cordially invited to contact the undersigned at the number provided below.

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Respectfully submitted,

/CAH/

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## Appendix “A”

### Clean Version of the Claims